

No. 14,668

United States Court of Appeals  
For the Ninth Circuit

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UNITED STATES OF AMERICA,

*Appellant,*

VS.

MARGARET D. SHORT, as Administratrix of the  
Estate of Ethel Grace Short, Deceased,

*Appellee.*

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JAMES HARVEY SHORT, Individually and as Ad-  
ministrators of the Estate of Irving Ritchie  
Short, Deceased,

*Appellant,*

VS.

MARGARET D. SHORT, as Administratrix of the  
Estate of Ethel Grace Short, Deceased,

*Appellee.*

Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division.

REPLY BRIEF OF JAMES HARVEY SHORT,  
INDIVIDUALLY AND AS ADMINISTRATOR OF THE  
ESTATE OF IRVING RITCHIE SHORT, DECEASED.

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Ethel Grace Short, the deceased primary beneficiary in the policy involved, had two sons, the insured veteran, Irving Ritchie Short, and James Harvey Short, the latter being one of the contingent beneficiaries

named in the policy involved. Both decedents died intestate.

The mother was the sole heir at law of Irving, and James Harvey Short is the sole heir at law of and administrator of the estate of Irving. His wife, the plaintiff, Margaret D. Short, is administratrix of the mother's estate.

The relationships herein set out were stipulated to. (R. pp. 53 and 54.)

The complaint filed by Margaret D. Short, as administratrix of the estate of Ethel G. Short, alleges the possible rights of James Harvey Short (R. p. 30) and prayed that the rights of all parties be determined (R. p. 32.) The answer of James Harvey Short, individually and as administrator, pleaded the facts as they had been pleaded by said administratrix and made the same prayer. (R. pp. 48 and 49.)

As defendant, James Harvey Short, claimed any such rights as he may have as contingent beneficiary and as administrator of the veteran's estate. And on behalf of said estate, he points out that subsection (u), which was added to Section 602 of the Act of 1940 by Section 9 of the 1946 Act, here involved, declares that the entire policy is payable to him as administrator of the veteran's estate. He simply asserts that if subsection (u) is to be applied exactly as it reads, the court must hold that the value of the installment payments due at the date of the death of Mrs. Short on June 14, 1951 should be paid to the veteran's estate. That would be in line with the holding in the

*Henning* case (344 U.S. 66), that the terms of the statute must be strictly followed. If, however, it is implied that the insured could appoint the two contingent beneficiaries and thus eliminate the command referred to, said defendant earnestly urges that it may not be further implied that they would be entitled to the installments on the policy which accrued while the mother was living and which remained uncollected while she was endeavoring to have the death of the son established.

Dated, Berkeley, California,  
June 20, 1955.

Respectfully submitted,

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Deceased.*

